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U.S. Citizenship and Immigration Services

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MAY 11 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 99 081 50107

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director approved the preference visa petition on May 7, 1999 and revoked approval of the petition on September 26, 2001. The petitioner appealed the director's decision dated September 26, 2001. On August 22, 2002, the Administrative Appeals Office (AAO) summarily dismissed the appeal. The matter is now before the AAO on the petitioner's motion to reconsider. The motion will be granted and the previous decisions of the director and the AAO will be affirmed.

The petitioner is a 28-year old native and citizen of Pakistan who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The record reflects that the petitioner wed a U.S. citizen, in Pakistan on October 9, 1998. The record indicates that the petitioner entered the United States as a K-1 fiancée on October 18, 1998.

On January 8, 1999, the petitioner filed a Form I-360 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The director served the petitioner with his notice of intent to revoke approval of the petition under Section 205 of the Act, 8 U.S.C. § 1155 on June 26, 2001. The director based his notice of intent to revoke, in part, upon a California court's annulment of the petitioner's marriage based upon the petitioner's fraud in an effort to obtain immigrant status in this country. The director further noted that the charges brought by the petitioner against her spouse in connection with his alleged behavior toward the petitioner were dismissed and a California court issued a Factual Finding of Innocence. The director, after reviewing the evidence submitted in response to the notice, found good and sufficient cause to revoke the previously approved petition, and exercised his discretion to revoke the petition on September 26, 2001.

On motion, counsel submits a brief and additional evidence in the form of affidavits.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

> (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

> A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

* * *

> (D) Has resided . . . with the citizen or lawful permanent resident spouse;
>
> (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
>
> (F) Is a person of good moral character; [and]
>
> * * *
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The director revoked approval of the petition, in part, because the petitioner had failed to establish that she had entered into the marriage in good faith.

According to the evidence on the record, the petitioner wed her United States citizen spouse, Pakistan on October 9, 1998. According to the evidence, the marriage was arranged by the petitioner's and her husband's families, as is customary in Pakistan. Nine days after they wed, the petitioner and her spouse entered the United States and took up residence together in Elk Grove, California.

The record contains police reports of two domestic violence incidents. The first incident occurred on November 6, 1998 when the petitioner's attorney contacted the police at the petitioner's behest. Police units were dispatched to the residence and the call was cleared as a verbal argument. The record contains a police incident report dated December 3, 1998 that indicates that the petitioner informed the police that she was not allowed to leave her home, and that her husband slapped her around three or four times a week and compelled her to have intercourse with him. The police report further indicates that the police sought to arrest the petitioner's spouse at his place of work and learned that the petitioner's spouse was meeting with his attorney to discern how he could have his wife (the petitioner) deported. The report states that the petitioner's spouse was charged with domestic violence, false imprisonment and spousal rape. (08109115-01/PC 273.5(A) and PC 236). According to the record, the charges were dismissed on January 29, 1999.

According to the record, the petitioner's spouse filed for an annulment of their marriage. The petitioner contested the annulment. On July 22, 1999, a Superior Court of the State of California annulled the marriage on the ground of fraud committed by the petitioner in an effort to obtain permanent resident status. The petitioner appealed the Superior Court decision to the California Court of Appeals. The California Court of Appeals upheld the lower court decision to annul the marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

> *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

On motion, counsel for the petitioner submits four affidavits from the petitioner's family members and her former community members in Pakistan. stated that he was involved in the engagement of the petitioner and her citizen spouse. states that he solemnized and registered the parties' marriage

certificate. testified that he was present at the parties' marriage ceremonies in Pakistan. the petitioner's father, stated that he participated in the petitioner's arranged marriage to the citizen spouse. In review, the evidence is insufficient to overcome the deficiencies in the record or to establish that the petitioner entered into the marriage in good faith. As noted in the director's decision, the petitioner failed to reconcile inconsistencies in her testimony regarding how frequently she was abused by her citizen spouse and whether her spouse held her incommunicado as claimed. The court transcripts and rulings are evidence that the petitioner entered into the marriage for the purpose of gaining lawful permanent resident status.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the prior decisions of the director and the AAO will not be disturbed.

ORDER: The decisions of the director and the AAO are affirmed.